439 556 [583] in lieu of the death penalty [21] and they also served as betrothal presents.[22]

A village or a group of villages would possess fishing grounds in common. These were open to the free use 423 226 [685] of the members of the group but were prohibited to outsiders and violations of fishing grounds had to be compensated. In the *Hokkaidō Dojin Hōshiki Sonota Zatsuji Dai-Ryakuchō* [*HDHS*] [Great Abridged Compendium of the Laws and Other Matters of the Hokkaidō Natives] it says:

> In hunting or fishing, in the mountains or the sea, there was usually a boundary between districts and it was forbidden to hunt or fish in the territory of another district. [224] [685] In hunting, when people from Hitaka and Tokachi poached in the Ishikari region any native who apprehended them was authorized to confiscate their skins after interrogation. They were not deprived of their catch prior to questioning.

423 229 According to the native Mombetsu Urenbōku,[23]

> There is a boundary within which we can catch deer, bear, and fish and the natives of the village are not allowed to hunt outside their territory. If they went into other territory, they would be immediately punished.

423 [175] While it may seem that the above divisions were the result of the *Basho* contract system, the fact seems to be that the *Basho* themselves were divided according to the hunting and fishing territories of the Ainu. For example, here is a judgment rendered in 1767 when the [671] Atsuta *Basho* and the Masuke *Basho* quarreled over their boundary line, "Affairs in Ezo shall be settled according to the custom of the Ezo." [24] A more positive proof lies in the fact that this custom of boundaries is found in the island of Etorofu where no *Basho* was established. In *Etorofu Shi* [History of Etorofu] under the year 1809 it says,

> There are boundaries, both in the mountains and the sea of which the chiefs are in charge. Outside one's own boundary one is prohibited from so much as even cutting a blade of grass. In the event that one sights a group of whales he is to receive permission from the chief of the territory and the catch is to be apportioned under the orders of the chief. The law is very stringent and anyone violating it is deprived of his catch as a punitive compensation after a charge and deliberation.

423 628 The quarrels among the Ainu communities were chiefly over hunting and fishing rights. Not only were hunting and fishing grounds communally owned but the community hunted and fished as a unit. In the *Ezo Kembun Shi* [A History of Personal Experiences in 423 226 [224] Ezo] 7, there is a translation of an epic or *Yukara* (in reality an *Isotaku* or hunting legend) supposedly dictated by an Ezo from Osarubetsu which gives a vivid description of how the Ainu help each other in bear

[21] Kindaichi Kyōsuke, *Yukara Kenkyū* (Studies in *Yukara*) 2: 240.

[22] Kōnō Tsunekichi, *Kyūdojin* (Aborigines), 8.

[23] *Hokkaidō Times*, June 29, 1918.

[24] Matsumae Hironaga, *Fukuyama Hifu Kokon Sojō-bu* (Section on Petitions, Fukuyama archives) in *SHS* 5: 234.

684 people without their noses." This cutting off the nose of an adulterer or adulteress is called *Etorasuke* [Etumesu?—to cut off the nose] and was in vogue until recently. We find then that punishment ranged from atonement made through property settlement to such corporal punishment as *Ukaru* and included such penalties as the loss of honor through loss of the hair [681] or the nose. There were other penalties for minor offenses of which the *Watarishima Hikki* speaks, "As for thieves, the chief kept them tied in his house." In 685 addition there were lashing and hanging the culprit by his hair from a beam. More serious offenses were punished by the removal of some part of the body as an ear or a finger and exile was also a punishment. This latter could be serious enough to endanger the life of the victim if the village were itself isolated either socially or geographically. Exile was a frequent judgment.[63] According to the *Hokkai Zuihitsu*, "If someone commits a crime he is driven away from the village."

681 There seems to be no doubt that the death penalty was assessed for crime but since, according to their religious views, death in itself was not necessarily a punishment, it was executed in a merciless manner designed to make the accused suffer as much as possible before dying. For example, the eyes could be pierced by needles and the victim buried alive[64] or the tendons of the legs cut and the criminal banished to the wastelands.[65] Death was of course the outcome of these actions but was not in itself the objective of the actions taken.

Compensation was frequently called for. It was called *Tsugunai* [*Tsugunau*—to compensate] as in Japanese or sometimes *Ashinpe*. Hayashi Kingo interprets *Tsugunai* as "compensation," "atonement," or "arbitration charge," and *Ashinpe* as a minor fine,[66] but there is really no clear distinction.

[439] Merchandise used for foreign exchange such as utensils, weapons, and swords were used for *Ashinpe*. *Ashin* is "new" and *pe* is "thing" and referred to things obtained through trade with foreigners. The scope of *Ashinpe* was very wide, it being imposed in practically all offenses. The fact that most crimes were settled by the offering of *Ashinpe* is seen in *Tōyū Ki* [Journey to the East] which says: "No matter what the crime may be if wealth is offered a life is saved from further danger," and that the other and more severe penalties were imposed only when the accused had no wealth to offer is seen in the *Ezoshima Ki*, "The guilty was never sentenced to death, instead a fine would be imposed. If unable to pay the fine his beard was pulled out and he was set free." In the *Tsugaru Kibun*: "If one has committed a crime but has no treasure to offer, his life was taken." The payment of atonement came not only

[63] *Ibid.*, 240–241.
[64] *Kyokuboku no bessekai*, 48.
[65] *The Ainu and their folklore*, 241–242.
[66] Hayashi Kingo, Ainu no genshi shakai (Primitive society of the Ainu), *Dorumin* 14 (6).

[P.21(A)]

1. The Ainu in Matsumae or in its vicinity were treated as Japanese but the number of these Ainu was very small especially when measured against the total native population of Ezo.

2. The Ezo who submitted after 1669, that is all the Ezo of Hokkaidō except those in the remote east of the Akkeshi district, were permitted self-government but were obedient to the general regulations of the Matsumae. This constituted the majority of the Ezo.

3. The Ezo of Karafuto and Chishima where Matsumae influence was weak were independent and had only trade relations with the Japanese.

These three types indicate the historical development of political control. The areas under situation 1 had been, at the time the Matsumae became independent, ruled as though they were type 2, while those in situation 3 became type 2 areas after the Kunashiri and Menashi incidents of 1789. Type 2 was the most important from an economic standpoint and the most common. Under type 2 there was no interference with the ancient customs of the Ezo; on the contrary there was an attempt to retain them as much as possible. In the *Basho* the old traditions of the Ezo were carefully observed. We have a record of a boundary dispute in 1767 between the Atsuta *Basho* controlled by the clansman Takahashi Asaemon and the Mashige *Basho* run by Shimonokuni Tadami. (The record on this was written by Kakizaki.)

> In reference to the problem of trespass in Mashige and Atsuta, a complaint was filed last year without any results obtaining. The other day Shimonokuni was summoned and told that *problems in Ezo should be settled according to the custom of the Ezo* and that boundary posts should be taken away with the assurance that no one shall be trespassing. As a result the advice was accepted and the complaint made by Asaemon was cancelled.[51]

Disputes over boundaries were settled by Ezo custom. The punishment of individuals was left in Ezo hands. In the *Ezo Fudoki* written by Sekitomo Shikei, he says: "Even when a quarrel resulted in the death of one, the judgment was left in the hands of the village chief. Unless the crime was a most serious offense the Matsumae officials did not interfere." In the *SGM* we find that, "When an Ezo broke the law 10, 15, or even 100 *Emushi* (a kind of Ezo sword) had to be paid by him, in accord with the degree of his crime, as *Tsugunai*. In other cases he was imprisoned for several days. In any case their life was spared." *Tsugunai* was the same as *Ashinpe* and one of the commonest of Ezo punishments from early times. The reason for the sparing of life lay in the absence of the death penalty in the Ezo code.[52] Those who oppose the policy taken by the Matsumae point out that they preferred not to assimilate the Ainu with the Japanese; that they forbade the Ezo to use the Japanese language; that they discouraged the Ezo from learning how to write; that they forbade the

[51] Italics are mine.
[52] See p. 21.

2: Batchelor M-5 (1877-1924) 1927
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asserted that they traded with the races living in Eastern Siberia, and with the Kurile and Aleutian Islands and with Kamschatka. They also did much trade by barter with Matsumai. Chief Penri informed me that his ancestors traded with Manchuria. As proof of this he showed me a string of Manchurian cash, the brass bowl of a tobacco pipe, and some brass rings with which the Saghalien Ainu women decorated their belts.

The Ainu community had various methods of punishing offenders, which were regulated by the different misdemeanours committed and the dispositions of the judges and people. They never appear to have favoured the death penalty, since they considered death no punishment at all. Infliction of pain or disgrace only did they consider worthy of the name of punishment, and the more severe the pain the greater the punishment. Tying up with cords and beating was the most common method of punishing offenders, though this was superadded to other kinds in some cases. The mad were sometimes treated in this way.

For breaking into a granary a very sound beating was administered for the first offence, and this was a great disgrace. For the second, sometimes the tip of the nose or the lobes of the ears were cut off and the offender was driven out of the village and boycotted. For breaking the seventh commandment, it used to be the custom to impose fines, or to tie up the hands of the male offender behind his back and then hang him up by the hair of his head with his toes just touching the ground, and give him a whipping. The female was generally allowed to go free in disgrace, though sometimes she came in for a flogging. Single people were generally made to marry.

For murder it was customary to cut the tendons of the feet, thus maiming the culprit for life. The tendons were severed close to the heels. This was a

2: Batchelor M-5 (1877-1924)1927
AB6 Ainu AB6

meet at the appointed place on a given day, the younger folk also being allowed to be present. The disputants would carry on a wordy conflict through their selected representatives, lasting for days on end sometimes, if the cases required it, and the question as to which side had won would be decided by the vote of all the elders assembled. Many local differences were settled in this way, though the tribal quarrels were more difficult and arms were at times resorted to or night raids made. The assembly also determined what fines, if any, were to be imposed. This plan suited the people well and they abode faithfully by the decisions arrived at. The fines usually consisted of the skins of animals, dried fish, beautiful seal-skin garments or heirlooms.

It should be understood that the Ainu settlements were mostly along the rivers. Those dwelling near the river banks in any district would lay claim to these as their own peculiar property in which to fish, and to the surrounding mountains and plains as their personal hunting domains, thus making certain territories their own private property, in which none but the owners had any right to hunt or fish. Transgression of these unwritten but well understood fishing and hunting rules meant tribal discord and intertribal quarrels. When these could not be easily settled between the villages where the poaching had taken place, the people were called together and the matter was openly considered and adjusted. In the special instances I have now in view, the "Stone of Contention" was the place chosen, and the cases were carried on in a dignified manner with all due religious and ceremonial rites and respect.

I once knew a very affable and courteous Ainu whose name meant "Mouth of Peace." For short I here call him Mr. Mo, the first syllable of his name, which means "Peace." He was quite a well-to-do man, for at the time I first knew him he had in his posses-

2: Batchelor M-5 (1877-1924)1927
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756
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A SHAMAN AND HIS WIFE
(The points of their noses have been cut off for theft.)

2: Batchelor M-5 (1877-1924) 1927
AB6 Ainu AB6

685 During one of my walks with Chief Penri in bygone days, we came across a tiny hut hidden away from everyone in the scrub, and, going to it, found two people, husband and wife, who had lost the points of their noses.* And this marked them off as people apart. They paid great deference to the chief. I asked Penri about them afterwards and he told me they were very bad people indeed, and he had helped to cut off their noses at the ends a few years before, because they had been guilty of breaking into a granary and carrying off the grain. They were living there because they had been expelled from their village and no one would allow them henceforth to reside with them in the communities. They were boycotted. "This is how it comes to pass that they are hidden away here, the beasts!" he said. These two were my first personal shaman acquaintances.

756 I met this worthy couple again many years after in Sapporo. They had built a little lodge just outside the city, near the road, and they were getting a living in the city by dancing and begging. One day my Ainu servant told me that a person had died in their lodge and would I care to go with him and see them? Upon going I found one or two friends had gathered there and thought it would be a good time to give an address. I spoke in Ainu on the Christian's hope. This pair of shamans, sitting there by the hearth, looked so earnestly at me and seemed to be so much interested in what I was saying, that I warmed up and kept at it for quite a long time. The man had his shaman's stick or wand in his hand. At length I saw him cast his eyes down and strike the hearth vigorously. And with a grunt, his wife also took her eyes off me. I then closed the meeting and returned home. As we were walking along, my man burst out laughing and said "Did you notice the pair of them fix their gaze on you, Sir?"

*Their photo is given at the beginning of this chapter.

3: Hitchcock N-5 (1888) 1891 AB6 Ainu AB6

778 through several generations. The skull of a fox is supposed to ward off evil from the house. It is sometimes carried to the hunt and to sea [825 787] as a protection against evil spirits. It is also consulted as an oracle,

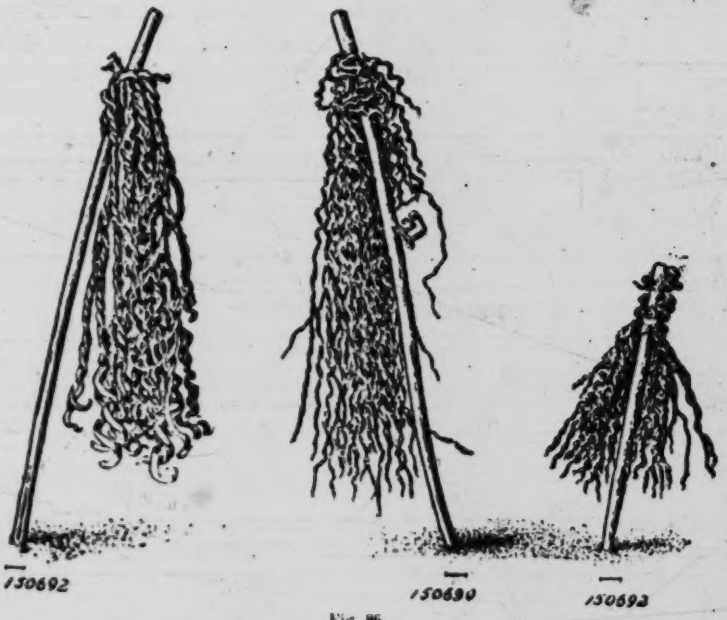

Fig. 86.

INAO — WILLOW STICKS WITH SHAVINGS ATTACHED.

and questioned concerning articles lost or stolen, or when fishermen lose their way at sea, in order to learn the direction home.

FORTUNE-TELLING.

787 The manner of consulting the fox-skull oracle has been described by Dr. Scheube. After presenting a drink-offering, the skull is taken in the two hands while a prayer is spoken. Then, placing the under jaw on his head, the person bows forward until it falls, and the direction towards which it points, indicates the place where the lost or stolen article is to be found. If the jawbone falls on its side, or so that the teeth are down, the answer is not decisive and the question must be repeated. A thief discovered in this manner is not brought to trial, [685] but the owner of the property waits patiently until the offender brings back the stolen goods and seeks forgiveness. The Ainos also read the lines of the palm of the hand.

THE BEAR FEAST.

796 The great Aino festival is the so-called bear feast, which is celebrated in September or October. This festival is of such an important charac-

4: Landor T-5 (ca. 1890)1893 AB6 Ainu AB6

157 appear to act more automatically than with keen and constructive intelligence.

The Ainu are not to be taken *au pied de la lettre*, for the illusions produced by ignorance and untutored imagination prevent anything like literal accuracy; but they are not what we may call conscious and immoral liars. A good example of this is my adventure at Horobets, when, although they knew that they would be severely punished by the Japanese policeman, the Ainu confessed their attack on me, and did not attempt either denial or evasion. They are often plucky, and even distinctly courageous; as, when out bear-hunting, a man armed only with a large and not over sharp knife unhesitatingly attacks this formidable beast, who sits up on his hind quarters, sure to crush the life out of his assailant should he miss his stroke. The Ainu, protecting his head with his left arm, and having taken the precaution to cover his back with skins, goes merrily for the embrace; and while Bruin squeezes, the hairy man splits its body open with the large knife.

152 The Ainu are cool-blooded. They are not subject to strong emotions, and therefore they are not much affected by dreams and nightmares. They are not affectionate except for a momentary impulse; but, like most animals, they are faithful 152 when they love. Mothers are fond of their children till they 593 have reached puberty; but after that the affection seems to fade away. Paternal love is much less strong.

150 The pure Ainu are comparatively honest people, which may 577 be due to the incapacity for being dishonest. In a country where there is no exact definition of property, where anybody can get what he requires without resorting to theft, there is no reason why everybody should not be honest. Then, according to Ainu ideas, stealing is not always stealing. For instance, 183 if an Ainu, without asking, takes away some of the salmon ●[685] caught by one of his hairy brethren, he will be blamed for it, he will get into a row, and probably be beaten; but if the theft is perpetrated on a Japanese or a stranger he will be praised, though the Ainu well knows that he is not acting right. Their desire is stronger than their conscience, such as it is; and having no laws of their own to rule them worth [671] speaking of, they often do according to their desire, without deserving the accusation of conscious dishonesty. It is exactly

11: Watanabe E-4,5 , (1951-1959) 1964 AB6 Ainu AB6

231 own ceremonies, only took part in those of the other sections of the *shine*
796 *itokpa* group[68].

796 Territoriality and the System of Social Solidarity between the Ainu and
619 Habitat.

423 The Ainu used to believe that the *kamui*-spirits which lived in the *iworu* of the neighbouring river looked after them. The inhabitants of a river, i.e. the river group, claimed exclusive rights to exploit the resources in the river basin which consisted of land- and river-*iworu*. Outsiders were allowed no access to those resources except by permission. The permission was obtain- [796] able from the headman of any local group in the river valley by going through a certain ritual procedure for the local *kamui*-spirits. Their claim to resources on land was activated not only by their economic interest but also by their cosmological system as such.

423 226 If some one wanted to fish at the spawning grounds owned by another [628] local group, he had to ask for permission of the headman of that group. [782] Under the direction of the headman, the applicant observed a proper ritual for the fire-spirit and the river-owning spirit and offered *inau*-sticks made [431] by him to the spawning ground where he wanted to fish. After fishing, he would give part of his catches to the headman and the people who lived near the spawning ground and customarily fished there. The proportion of the amonunt of the 'gift to the fire-spirit' to his catches seems not to have been prescribed. Among the member local groups of the same river group, permission was usually given without fail.

Fishing in areas of a river outside of those named spawning grounds and private sites was freely done as occasion demanded by the people of the same river, that is, by the members of the river group. There was, however, a custom that in order to prevent any fishing by outsiders without permission, every fisherman gave information of his coming to the people of the near- [431] by settlement. Sometimes he might inform on his way home. Also in this case, part of his catches was usually given to them as a gift to the fire-spirit.

776 619 423 In the case of gathering, either fishing, hunting or collecting, in the territory of a different river group, one had to get permission from any one of the headmen in the river valley, regardless of the method of one's fishing or [782] hunting. Such permission was given on the performance of a ritual for local *kamui*-spirits concerned, but not always, because assurance was required that [685] the fisherman or hunter be faithful to the local *kamui*-spirits. The discoverer [782] of any tresspasser must bring him to his headman or some headman available at hand in the river valley, to make him apologize as soon as possible to the local *kamui*-spirits of the river concerned[69]. Also the discovery of such evidence of tresspass as salmon bones thrown in the mountains of the river was

11: Watanabe E-4,5 (1951-1959) 1964 AB6 Ainu AB6

621 423 (47) About the territory jointly maintained by the local group.—"Hokkaidō Kyū-dojin" (The Former Natives of Hokkaido), published in 1911 by the Hokkaido government, informs, "Although no definite boundary marked off one *kotan* territory from another, its area of fishing and hunting was apparently more or less clearly defined" (Quoted in SASAKI, 1927, p. 25). TAKAKURA remarks that the *kotan* or a group of *kotan* had a hunting or fishing ground in common for all its members to utilize freely and that trespass by non-members was forbidden by penalty of atonement, *ashimpe* (TAKAKURA, 1942, p. 21). He also quotes an Ainu as informing, "Areas for deer and bear hunting as well as for fishing were marked off. Natives of a *kotan* were not to hunt or fish elsewhere than in their own area or territory. Anyone that dared to do so was punished immediately" (Ibid., p. 21). The last-cited information closely resembles the accounts heard by the present writer from a good many informants. Such, for example, was the abstract and generalized information picked up in the earlier stage of his interviews: "For both hunting and fishing each *kotan* had its own restricted area"; "Fishing grounds were customarily marked off for different *kotan*"; "In front of one's *kotan* was its fishing ground"; "Each *kotan* had its own area for deer and bear hunting"; "From the time of our great-grandfathers or great-great-grandfathers each *kotan* had had a dale of its own for bear hunting"; "Formerly each *kotan* had its own *iworu*, hunting ground"; "Bear hunters protected their respective *iworu* (p. 70; Note 58) as their own"; etc.

[685] [192] On further analysis of these generalizations in the light of both the habitat and the actual gathering activities performed in it, it will be seen that after all the word *kotan* is used in two ways: a local group as a whole in reference to a fishing ground and a cooperative group as a constituent unit of a settlement, *kotan*, in reference to a hunting ground. Actually, the fishing ground or territory for each *kotan* was the named spawning grounds of dog salmon maintained jointly by the local group (p. 59). Strangely, notwithstanding their extreme importance to Ainu life, spawning grounds as such have received no attention so far from students of the Ainu. The hunting ground of each "*kotan*" as called by the Ainu themselves means actually the bear or deer hunting territory maintained by a cooperative group of males from families usually belonging to the same settlement. For distinction and relationship between the *iworu* as simply an area around a stream and the *iworu* as a hunting territory, see Note 58.

Referring to the Saru valley Ainu, IZUMI reports as follows: "The *iworu* (i.e. territory of the Saru people), as the arena of their daily life, is divided among and occupied by a certain number of *kotan* (villages)....It is probibited to enter the *iwor* of any other *kotan* than one's own without permission, except the *ru* (public way)" IZUMI, 1951, p. 29 and Map 2 on p. 32. As in-

family and he had been in Japanese service since an early age, which circumstance had made his knowledge of the bear rite insufficient for a chief priest. The duty on this occasion had accordingly been commissioned to Kawasaki who had caught the cub, but something or other prevented him from taking up the duty, which finally went to old Teshi of Kutcharo. Of all the eight *inau* offered to the bear-spirit the most important were the two fixed to the forked ends of the pole set up at the outdoor altar and supporting the bear's skull. These carried Ōno's ancestor mark, *ekashi itokpa*, which also marked other two of the remaining six set up on both outer sides. Of the rest two had the *itokpa* of Kawasaki and one that of Tosa. The person who offered the remaining one is not mentioned. NATORI did not give any information about the kinship relation between those persons who offered the *inau* and that between their *kotan*; however, it is interesting to see that the ancestor marks of all those persons share a common design element but differ from each other in the total pattern (ibid., p. 131, Fig. 39).

NATORI states that though presided over by a chief priest, the Ainu bear ceremony was no family affair but a joint observance of the whole local membership. In the days when the headman was the indisputed centre of authority, every bear cub taken was brought to him and every bear killed on a hunt received due rites in his presence (ibid., p. 131).

68) INUKAI and NATORI is the only writers who have supplied information on the frequency of the bear festival. He points out that in spite of many writers describing the ceremony as if it were a sort of calendar custom in the Ainu *kotan*, there can be no bear ceremony in a *kotan* in the year when no cub is taken; that since different households in the same *kotan* may capture cubs in different years, it is natural that different families perform the festival in different years; that in some years one family may ritually kill two or three cubs at a time (INUKAI and NATORI, 1939, p. 255). These points have been confirmed in his surveys by the present writer. Usually, a cub caught in the spring was killed at the ceremony early in the following year. Sometimes one was kept for two or three years before it was killed. The development of the bear-rearing custom among the Ainu as described above naturally had for its requisite more or less surplus production of food stuffs. The stability of the settlement should be counted among other factors.

69) In the *kamuinomi*-ritual he[1] was required to offer *ashimpe* to the *kamui* concerned. The *ashimpe* in this case might include, besides *inau*-sticks, some items regarded by the Ainu as the best of their treasures, *ikoro*, such as *tuki* and *shintoko*, lacquer wares imported from Japan. Such *ikoro* were offered to local *kamui* concerned also in case of getting permission in advance of

1. [i.e., a person who was apprenhended while trespassing in the territory of another river group--Analyst]